

BEFORE THE OFFICE OF CAMPAIGN FINANCE  
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS  
FRANK D. REEVES MUNICIPAL BUILDING  
2000 14<sup>TH</sup> STREET, N.W. SUITE 420  
WASHINGTON, D.C. 20009  
(202) 671-0550

IN THE MATTER OF	)	
	)	DATE: October 29, 2002
Henry S. McCall	)	
(former) Deputy Chief of Staff for	)	
External Affairs	)	DOCKET NO.: CF 2002-11
Executive Office of the Mayor	)	

**ORDER**

**Statement of the Case**

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report) (OIG Control Number 2001-0188 (S)). In the Report, the OIG has alleged that certain current and former employees engaged in behavior that violated provisions of the District of Columbia Personnel Manual Standards Of Conduct.

In the instant case, the Inspector General has alleged that Henry S. McCall (hereinafter respondent), former Deputy Chief of Staff for External Affairs in the Executive Office of the Mayor (hereinafter EOM) engaged in private or personal business activity on government time and with the use of government resources on behalf of the private, non-profit Millennium Washington Capital Bicentennial Corporation (MWCBC) in violation of §§1800.1, 1803.1(e)(f), 1803.2(a), 1803.10, 1804.1(b)(d)(e) and (i) 1805.2 and 1806.1 of the District Personnel Manual (hereinafter DPM).<sup>1</sup>

---

<sup>1</sup> DPM §1800.1 reads as follows:

Employees of the District government shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

DPM §1803.1(e) and (f) read as follows:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of the following:

...

---

(e) Making a government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of government.

DPM §1803.2(A) reads as follows:

(A) District employees shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

(a) Has, or is seeking to obtain, contractual business or financial relations with the D.C. government;

(b) Conducts operations or activities that are subject to regulation by the D.C. government; or

(c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

DPM §1803.10 reads as follows:

An employee shall not interfere with or obstruct an investigation by a District Agency.

DPM §§1804.1(b), (d), (e), and (i) read as follows:

An employee may not engage in any outside employment or other activity, which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include but are not limited to, the following:

...

(b) Ordering, directing, or requesting subordinate officers or employees to perform during regular working hours any personal services not related to official D.C. government functions and activities;

...

(d) Maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee;

(e) Engaging in any outside employment, private business activity or interest, which permits an employee, or others, to capitalize on his or her official position[; and]

...

( i ) Engaging in any outside employment, private business activity, or other interest which is in violation of federal or District law.

DPM §1805.2 reads as follows:

No District employee... may acquire an interest in or operate any business or commercial enterprise, which is in any way related, directly or indirectly, to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is in any way related to matters over which the employee could wield any influence, official, or otherwise.

DPM §1806.1 reads as follows:

A District employee shall not use or permit the use of government property, equipment or material of any kind... for other than officially approved purposes.

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.<sup>2</sup> See D.C. Official Code §1-1106.01. Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated August 15, 2002, OCF requested respondent to appear at a scheduled hearing on August 23, 2002. The purpose of the hearing was to show cause why the respondent should not be found in violation of the Standards of Conduct, which the respondent was alleged to have violated in the OIG Report. On August 21, 2002, by letter, respondent requested an extension for said hearing date until after September 15, 2002, which was approved. On September 19, 2002, the respondent appeared before the OCF.

### **Summary of Evidence**

The OIG has alleged that the respondent violated the above referenced provisions of the DPM as a result of his role as a Director and President of MWCBC, which was a private, non-profit, tax exempt corporation that was used to generate funds for non-government activity. Consequently, the OIG has alleged that the respondent engaged in activity which was not compatible with the full and proper discharge of his responsibilities as a government employee and created the appearance of an impropriety.

On September 19, 2002 the respondent appeared pro se before the OCF at a scheduled hearing conducted by William O. Sanford, Esq., Senior Staff Attorney. Wesley Williams, OCF Investigator, was also present.

---

<sup>2</sup> D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

### **Synopsis of Proceedings**

The respondent is the former EOM Deputy Chief of Staff for External Affairs. He was employed in that position from January 1999 until he resigned in March 2000. He is not currently a District government employee.

During examination by Mr. Sanford, the respondent testified that he is familiar with the DPM Standards of Conduct; and he further testified that he had read and understood the allegations against him in the Report. The respondent was asked whether he was familiar with the MWCBC and to explain his relationship to and or his involvement in the corporation.

The respondent conceded that he, along with Gregory McCarthy and Marie Drissel, had served as incorporators of the entity in the fall of 1999 while they were all EOM employees. According to the respondent, he played the lead role in incorporating MWCBC and establishing the 501( c)(3) tax-exempt corporation to create a vehicle through which funds could be used to finance the District's Millennium celebration and related activities with non-taxpayer dollars. Respondent testified that Mayor Anthony Williams (hereinafter the Mayor) and his former Chief of Staff, Dr. Abdusalam Omer (hereinafter Omer) initially promised him a \$500,000.00 budget, but the funding from the program was not approved by the U.S. Congress, which has oversight authority over the District budget. Respondent testified that he eventually raised approximately \$1,080,000.00, including \$385,000.00 from the United States White House, which he received on December 13, 1999, after Omer informed him that promised funding had not been forthcoming.

Respondent consistently testified that he acted with the knowledge and consent of both the Mayor and Omer throughout the duration of his involvement with MWCBC. Specifically, the respondent stated that he was reassigned to work on MWCBC full-time by the Mayor in June or July of 1999 and transferred from his position as Deputy Chief of Staff for External Affairs. Respondent further stated that the Mayor and Omer were kept informed of all the MWCBC activity. Respondent stated that he reported to Omer on an almost daily basis and reported to the Mayor every Monday morning during Senior Staff meetings that were attended by 20-30 senior employees each week. Respondent further stated that there was never a discussion regarding whether it was appropriate for him and other government employees to work on matters involving a non-government entity because the Mayor wanted the work done and it was presumed that the activity was government activity.

Respondent conceded that MWCBC employees were housed in government offices at 441 Fourth Street, N.W., and used government furnishings, equipment and supplies even though they were working on behalf of a private entity. When questioned regarding as to

who arranged for the office space, furnishings, equipment and supplies for the MWCBC employees, the respondent stated that the Mayor and Omer made the arrangements.

Respondent conceded that he managed the MWCBC, established three bank accounts, co-signed checks and devoted full-time work on behalf of the MWCBC while he was employed and received compensation from the District government, between June or July of 1999 until he left the government in March of 2000. Respondent also conceded that he did not deposit any of the MWCBC funds into government accounts. Respondent corroborated Gregory McCarthy's contention that he was never a signatory on any of the MWCBC accounts.<sup>3</sup> Respondent stated that when MWCBC's funding was not approved by the United States Congress, Omer arranged for a loan in the amount of \$175,000.00 from the Washington Convention Center as "bridge funds" to keep the effort going. Respondent did not provide any details on how the transaction occurred.

Respondent emphatically stated that he made no decisions without the consent of his superiors namely the Mayor and Omer, he raised funds for the MWCBC pursuant to requests by the Mayor, and reported to the Mayor and Omer on a consistent basis. Respondent denied that he knowingly violated the Standards of Conduct and attributed his activity to performing assignments from his superiors. Respondent additionally stated that at no time was he informed nor did he have any reason to believe that the activity in which he engaged was inappropriate in any regard.

### **Findings of Fact**

Having reviewed the allegations and the record herein:

1. Respondent, Henry S. McCall, as EOM Deputy Chief of Staff for External Affairs, from January 1999 until March 2000, was a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. MWCBC was incorporated in October 1999 under the auspices of McCall, as a private, non-profit corporation to solicit donations for the 2000 millennium celebration in the District of Columbia. Report at 50-51.
3. From November 1999 through the middle of January 2000, MWCBC operated out

---

<sup>3</sup> Gregory McCarthy (hereinafter McCarthy) is currently EOM Deputy Chief of Staff for Policy and Legislative Affairs. From January 1999 until August 2001, he was EOM Director of Policy Evaluation. The OIG also alleged that McCarthy violated the above referenced provisions of the DPM as a result of his role as a director for MWCBC. The OCF Director agreed and advised the Mayor, by Order, to warn McCarthy as to his prohibitive conduct; and to ensure that McCarthy participates in scheduled meetings and workshops to become closely familiar with the provisions and prohibitions of the DPM Standards of Conduct.

of the EOM office located at 1 Judiciary Square, 441 4<sup>th</sup> Street, N.W., Washington, D.C. Report at 50-51 & 59.

4. From the middle of January through July 2000, MWCBC operated out of 1730 K Street, N.W. and was still supported by D.C. government funds and resources. Report at 59, 62 & 65.
5. Nonetheless, from July through November 2000, MWCBC operated, once again, out of the EOM office located at 1 Judiciary Square, 441 4<sup>th</sup> Street, N.W., Washington, D.C. Report at 65 & 67.
6. On or about June or July 1999, the respondent was reassigned from his position as EOM Deputy Chief of Staff for External Affairs to work on MWCBC full-time, on government time.
7. On or about June or July 1999 through March 2000, the respondent managed the business of MWCBC, conducted fundraising and collected monies on behalf thereof, established three (3) bank accounts, was a signatory on over 300 MWCBC checks, and devoted full-time work on behalf of MWCBC, while he was employed and received compensation from the District government. Report at Exhibit 1.
8. The respondent believed that it was not inappropriate to perform tasks and duties with regard to MWCBC because he performed these activities pursuant to assignments from the Mayor and Omer.

### **Conclusions of Law**

1. Respondent was an employee of the District of Columbia government and is subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. From October 1999 through November 2000, MWCBC, notwithstanding that it was a private, non-profit corporation, was supported by D.C. government employees, funds and resources; and, the respondent believed that MWCBC business was government business.
3. Respondent used District of Columbia government time and resources to perform extensive tasks with regard to MWCBC and MWCBC bank accounts from March through November 2000; and, notwithstanding the fact that respondent was directed by his supervisors to perform said tasks, it is more likely than not that the respondent was well aware that his actions violated the employee conduct regulations because respondent was in charge of a million-dollar private, non-profit corporation for which he signed or co-signed over 300 checks, and the monies should have been managed

through the D.C. Treasury.

4. Checks issued for District of Columbia government business emanate from District of Columbia government accounts managed and processed by the Office of the Chief Financial Officer (CFO). See D.C. Official Code §§1-204.24a et seq. (2001 Edition).
5. Respondent's complete and total management of MWCBC and MWCBC accounts, over which he signed or co-signed over 300 checks; and, notwithstanding that the purpose and proceeds thereof ostensibly inured to the District of Columbia government, was private, corporate business.
6. Respondent's complete and total management of MWCBC and MWCBC accounts, over which he signed or co-signed over 300 checks; and, notwithstanding that the purpose and proceeds thereof ostensibly inured to the District of Columbia government, was not government business.
7. The responsibility for enforcing the provisions of the employee conduct rules against the respondent would have rested with the Mayor.

### **Recommendation**

Had Henry S. McCall remained an employee, it would have been my recommendation that the Director advise the Mayor of the District of Columbia to take disciplinary action against Henry S. McCall based upon his violations of the Standards of Conduct to include a change in his assigned duties, corrective or adverse action, his disqualification for a particular assignment, pursuant to DPM §1801.2, or his removal from District government service.

It should be noted that prior to the issuance of the Report, the Mayor appointed an EOM Ethics Counselor and scheduled meetings and workshops to inform and clarify each staff member as to the provisions and prohibitions of the Standards of Conduct.

Because Henry S. McCall is no longer a District government employee, and, because the Mayor of the District of Columbia has taken steps to definitively and thoroughly inform each staff member as to provisions and prohibitions of the Standards of Conduct, I hereby recommend that the Director advise the Mayor to be always cognizant of this responsibility.

---

Date

---

Kathy S. Williams  
General Counsel

## **ORDER OF THE DIRECTOR**

The circumstances surrounding the instant misconduct involved an employee who believed that his conduct was within the parameters of his job description. But, Henry S. McCall is no longer a District government employee, and, the Mayor has taken appropriate measures, by appointing an EOM Ethics Counselor and conducting extensive workshops, to apprise and re-apprise his staff of the provisions and prohibitions of the Standards of Conduct. Thus, the Mayor has taken appropriate measures to ensure the integrity of government. I advise the Mayor to remain ever vigilant in this regard.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

---

Date

---

Cecily E. Collier-Montgomery  
Director

### Parties Served:

Henry S. McCall  
219 3<sup>rd</sup> Street, N.E.  
Washington, D.C. 20002

Charles Maddox, Esq.  
Inspector General  
Office of the Inspector General  
717 14<sup>th</sup> Street, N.W., 5<sup>th</sup> Floor  
Washington, D.C. 20005

## **SERVICE OF ORDER**

This is to certify that I have served a true copy of the foregoing order.

---

S. Wesley Williams  
Investigator



## **NOTICE**

Pursuant to 3 DCMR § 3711.5 (1999), any fine imposed by the Director shall become effective on the 16<sup>th</sup> day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14<sup>th</sup> Street, NW, Washington, D.C. 20009.